

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1086 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAVJIBHAI DHANABHAI VANKAR

Versus

STATE OF GUJARAT

Appearance:

MR SHETH for UM SHASTRI for Appellant.

MR KP RAVAL, Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/02/99

CAV JUDGEMENT

The appellant-original accused has preferred this appeal against the judgment and order passed by Additional Sessions Judge, Panchmahals at Godhra, on 17th November, 1998 in Sessions Case No.123 of 1996 whereby he has been sentenced to undergo imprisonment for a period of five years and to pay a fine of Rs.2,000/- in default, to suffer rigorous imprisonment for one year for the offence punishable under Secs.498-A and 306 of Indian Penal Code.

2. It is the case of the prosecution that,

appellant-accused was serving in Bakrol Primary School as a teacher and in that school one lady teacher Urmilaben was also serving. The accused and said lady teacher had a love affairs and the accused wants to marry her. As deceased Kashiben-wife of present appellant was objecting the same, accused was giving mental and physical torture to her, as a consequence of which, the deceased Kashiben committed suicide. Complaint to that effect was lodged against the concerned police station and offence was registered to that effect, and Investigating Officer has started investigation. After completing the investigation, I.O. has submitted charge-sheet against the present accused and a charge was framed against him by the Additional Sessions Judge after having committed the case to the Court of Sessions. The accused pleaded not guilty to the charge and claimed to be tried.

3. To prove the charge against the accused, the prosecution has produced documentary evidences and recorded the evidence of witnesses. After hearing the parties, the learned Additional Sessions Judge has recorded the above order of sentence against the accused.

4. At the initial stage, notice was issued and record & proceedings were called for. I have heard learned advocate, Mr.Sheth appearing on behalf of the appellant and also perused the oral and documentary evidence which have been shown to me by the learned counsel for the respective parties.

5. Mr.Sheth has argued that learned Additional Sessions Judge has not properly appreciated the evidence of Ambalal, brother of deceased and Manjulaben, sister of deceased and that of panchas. He has also argued that prosecution has failed to prove that deceased Kashiben has committed suicide due to mental and physical cruelty instigated by the appellant-accused. He has further argued that Executive Magistrate has not properly recorded the dying declaration of the deceased as deceased was not in a mentally and physically fit for giving dying declaration. He has further argued that deceased was of suspicious mind and there was no relation between the appellant and said teacher, and there is no direct evidence to that effect also. The learned Additional Sessions Judge has wrongly come to the conclusion that because of the relation the appellant had with said teacher and had given physical and mental cruelty to her, the deceased-Kashiben had to commit suicide.

6. Learned APP, Mr.Raval, drawing my attention

towards certain oral and documentary evidences which are on record, has argued that Executive Magistrate has recorded the dying declaration in proper manner and at the relevant time, deceased was in a mentally and physically fit for giving dying declaration. He has shown me the endorsement of doctor stating that deceased Kashiben was fully conscious and able to give dying declaration. He has also drawn my attention towards Exh.20, which is the letter written by the deceased to her sister-Manjulaben prior to the incident, which has been duly proved by the prosecution through brother of the deceased. According to prosecution, there are independent evidence alongwith the documentary evidences supporting the say of the prosecution. Finally, Mr.Raval has argued that looking to the seriousness of offence, the imprisonment awarded by the court below is just and proper.

7. I have gone through the record, more particularly, dying declaration exh.54, yadi exh.55 and endorsement made by the Medical Officer, CHC Kalol (PMS), wherein the Medical Officer has categorically stated, "This is to certify that the patient Smt.Kashiben Rajubhai Vankar is fully conscious and is in good condition and able to give dying declaration". In the dying declaration, deceased-Kashiben has categorically stated in reply to Question.3 that, one Urmilaben, who is serving with her husband, used to go for movie with her husband and thereafter they used to come to her house and stay together in the same house which led her to commit suicide. I have gone through the letter written by deceased to her sister-Manjulaben which is produced at exh.20 and proved by the prosecution, wherein it was categorically stated that father of Manish i.e. present accused-husband of the deceased was interested to marry Urmilaben and, because of that, her husband wants divorce. In my opinion, the dying declaration of the deceased is duly proved by the prosecution and I am in the agreement with the learned Sessions Judge that at the time of recording the dying declaration deceased was mentally and physically fit for giving dying declaration. Over and above, I have gone through the oral evidence of Manjulaben-sister of deceased and Ambalal, brother of deceased supporting the prosecution case. Moreover, prosecution gets corroboration from the evidence of witness Vasantjibhai Jayram Chaudary, oral evidence of Executive Magistrate, Gopalsinh Baria. In short, almost all the witnesses of the prosecution have supported the say of the prosecution. In their cross-examination, nothing has come out which helps or prejudice the appellants-accused. In my opinion, the prosecution has

established and proved the case against the accused beyond reasonable doubt. Hence, the sentence recorded by the learned Additional Sessions Judge is proper and not required to be interfered with.

8. I am not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREEDY reported in AIR 1981 SC 1417 which reads as under:-

"..... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9. In the facts and circumstances of the case, I do not interfere with the judgment and order passed by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions Case No.123 of 1996 on 17th November, 1998. Appeal is, therefore, required to be rejected and is accordingly rejected. Notice discharged.
